

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

## WILFORD ARMSTEAD,

Petitioner,

V.

DONALD HOLBRUCK,

### Respondent.

CASE NO. C11-563RSM

ORDER ADOPTING REPORT AND  
RECOMMENDATION AND DENYING  
PETITION

A Report and Recommendation was filed in this matter on December 5, 2011. Dkt. # 30. As it appeared to the Court that petitioner did not timely file objections, the Report and Recommendation was adopted, and the petition dismissed. Dkt. # 31. Subsequently, it was determined that petitioner had filed timely objections, but for unknown reasons they were not filed on the docket until later. Dkt. # 34. The Court vacated the dismissal and re-opened the case so the objections could be considered. Dkt. # 35.

Having now considered petitioner's objections, the Court finds nothing therein to cause it to deviate from the earlier judgment. Petitioner has for the most part simply attempted to substitute his own version of the facts for the state court findings which were based on the witness's testimony at trial.

## ORDER - 1

1 For example, petitioner argues that "Not one Witness ever identified Mr. Armstead as the shooter" and  
2 complains that counsel refused to advance the "viable defense" that petitioner was not even present at  
3 the scene of the shooting. Objection to Report and Recommendation, Dkt. # 34, p. 12. However, the  
4 Report and Recommendation notes that petitioner was placed at the scene of the crime and identified as  
5 the shooter by Mr. James, who "testified that he had known petitioner for twenty years." Report and  
6 Recommendation, Dkt. # 30, p. 20. Petitioner's remaining factual revisions are similarly unavailing.

7 After consideration of the petition for habeas corpus, the Report and Recommendation of the  
8 Honorable James P. Donohue, petitioner's objections, and the balance of the record, the Court now finds  
9 and ORDERS:

10 (1) The Report and Recommendation is approved and adopted;

11 (2) The petition for habeas corpus is DENIED and this case is DISMISSED;

12 (3) The Court declines to issue a certificate of appealability as to any claims asserted in the  
13 petition; and

14 (4) The Clerk shall enter judgment and shall send copies of this Order to petitioner, to counsel  
15 for respondent, and to the Honorable James P. Donohue.

16 Dated this 13<sup>th</sup> day of July 2012.

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RICARDO S. MARTINEZ  
UNITED STATES DISTRICT JUDGE